

RDWD0301-USA App. No. 10/519,440 (Baker) Amend. E Remarks 11 of 12

REMARKS:

It is respectfully requested that the claims be amended as indicated in the preceding section. Two whereby-clauses have been removed from claim 1, because they are not part of the definition of the invention. The 13 original claims used as basis for the Searches of 2005-12-13 and 2006-02-24 of the IFW did not refer to a magnetic recording device.

The whereby-clause of claim 7 has been removed because other methods of measuring timing or phase information are also commonly used as in US Patent 3686649 cited in the description.

A spelling error in claim 11 has been corrected.

The description and abstract have always included details of a pattern suitable for use in magnetic recording devices "or other machines". Applicant had initially written claims beginning with "A compound phase pattern..." as in claims of US Patent 6704156. In a telephone interview of 05/25/2006 the Examiner pointed out that a pattern is not considered to be a machine or an accepted class and suggested changing Claim 1 to the form "A machine comprising: a sensor or transducer; a compound phase pattern ...".

Applicant corrected some language and FAXed a draft of amended claims to the Examiner. The proposed claims included some clauses of the form "whereby ... can be ..." as suggested in the book "Patent It Yourself" by Pressman, Nolo Press, 2005. Those clauses were intended to show desirable results of the invention, but not to be necessary conditions.

In a two-minute telephone interview at 16:11, 05/30/2006 EDT (13:11 PDT) the Examiner suggested further changes to replace the indefinite "can be" in whereby-clauses by "is/are". Applicant could not review all claims during the two-minute interview. Subsequently applicant studied those clauses, but did not completely replace the "can be" language of independent claims 1 and 7. To do so might suggest that a beneficial result was instead a necessary part of the definition and might be construed as a limiting condition as in *Hoffer v. Microsoft Corp.*, Case No. 04-1103 (Fed. Cir. Apr. 22, 2005). Amendment D was FAXed to the USPTO at 4:38 A.M., 05/31/2006 EDT (1:38 PDT). Detailed times given in this paragraph are taken from the Billing Invoice from long distance provider, Primus.

Although the Notice of Allowability (2006-06-12 in the IFW) suggests that Applicant had approved an Examiner Amendment on 5/31/2006 there was no interview on that date.

Comments on Statement of Reasons for Allowance:

The "Reasons for Allowance" are too narrow because the application has always described a compound phase pattern that can be used in "other machines" as well as in magnetic recording devices.

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5 **CONCLUSIONS:**

Applicant submits that the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Therefore he respectfully requests that the claims be modified as shown above pursuant to Rule 312.

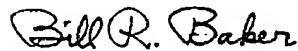
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Conditional Request for Constructive Assistance

Applicant has amended the specification and claims of this application so that they are proper, definite, and define novel structure that is also unobvious. If, for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. § 2173.02 and § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

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Very respectfully,



Bill R. Baker

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